

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

TRAVIS MANNS,

Plaintiff,

Case No. 2:22-cv-88

v.

Honorable Maarten Vermaat

ERICA HUSS et al.,

Defendants.

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed *in forma pauperis*. (ECF No. 4.) Pursuant to 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of Civil Procedure, Plaintiff consented to proceed in all matters in this action under the jurisdiction of a United States magistrate judge. (ECF No. 1, PageID.9.)

This case is presently before the Court for preliminary review under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court is required to conduct this initial review prior to the service of the complaint. *See In re Prison Litig. Reform Act*, 105 F.3d 1131, 1131, 1134 (6th Cir. 1997); *McGore v. Wigglesworth*, 114 F.3d 601, 604–05 (6th Cir. 1997). Service of the complaint on the named defendants is of particular significance in defining a putative defendant’s relationship to the proceedings.

“An individual or entity named as a defendant is not obliged to engage in litigation unless notified of the action, and brought under a court’s authority, by formal process.” *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999). “Service of process, under longstanding

tradition in our system of justice, is fundamental to any procedural imposition on a named defendant.” *Id.* at 350. “[O]ne becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend.” *Id.* (citations omitted). That is, “[u]nless a named defendant agrees to waive service, the summons continues to function as the *sine qua non* directing an individual or entity to participate in a civil action or forgo procedural or substantive rights.” *Id.* at 351. Therefore, the PLRA, by requiring courts to review and even resolve a plaintiff’s claims before service, creates a circumstance where there may only be one party to the proceeding—the plaintiff—at the district court level and on appeal. *See, e.g., Conway v. Fayette Cnty. Gov’t*, 212 F. App’x 418 (6th Cir. 2007) (“Pursuant to 28 U.S.C. § 1915A, the district court screened the complaint and dismissed it without prejudice before service was made upon any of the defendants . . . [such that] . . . only [the plaintiff] [wa]s a party to this appeal.”).

Here, Plaintiff has consented to a United States magistrate judge conducting all proceedings in this case under 28 U.S.C. § 636(c). That statute provides that “[u]pon the consent of the parties, a full-time United States magistrate judge . . . may conduct any or all proceedings . . . and order the entry of judgment in the case . . .” 28 U.S.C. § 636(c). Because the named Defendants have not yet been served, the undersigned concludes that they are not presently parties whose consent is required to permit the undersigned to conduct a preliminary review under the PLRA, in the same way they are not parties who will be served with or given notice of this opinion. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995) (“The record does not contain a

consent from the defendants[; h]owever, because they had not been served, they were not parties to the action at the time the magistrate entered judgment.”¹

Under the PLRA, the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff’s *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff’s allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff’s complaint for failure to state a claim.

Discussion

I. Factual Allegations

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Marquette Branch Prison (MBP) in Marquette, Marquette County, Michigan. The events about which he complains occurred at that facility. Plaintiff sues Warden Erica Huss, Assistant Deputy Warden Keith Pelky, Resident Unit Manager (RUM) Peggy Erickson, and Correctional Officers Unknown Kent, Unknown Hodgens, and Unknown Johnson. Plaintiff indicates that he is suing Defendants in their official capacities. (ECF No. 1, PageID.2–3.)

¹ *But see Coleman v. Lab. & Indus. Rev. Comm’n of Wis.*, 860 F.3d 461, 471 (7th Cir. 2017) (concluding that, when determining which parties are required to consent to proceed before a United States magistrate judge under 28 U.S.C. § 636(c), “context matters” and the context the United States Supreme Court considered in *Murphy Bros.* was nothing like the context of a screening dismissal pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c)); *Williams v. King*, 875 F.3d 500, 503–04 (9th Cir. 2017) (relying on Black’s Law Dictionary for the definition of “parties” and not addressing *Murphy Bros.*); *Burton v. Schamp*, 25 F.4th 198, 207 n.26 (3d Cir. Feb. 10, 2022) (premising its discussion of “the term ‘parties’ solely in relation to its meaning in Section 636(c)(1), and . . . not tak[ing] an opinion on the meaning of ‘parties’ in other contexts”).

Plaintiff alleges that he is currently in protective custody at MBP because “he is serving time for criminal sexual conduct” and has experienced threats to his safety. (*Id.*, PageID.4.) Plaintiff “has been targeted for assault and abuse in the past and cannot be housed in general population at this time.” (*Id.*)

On October 28, 2021, Plaintiff was emptying trash from his cell. (*Id.*) The inmate porter who was collecting the trash “jammed the wooden shaft of the cleaning broom through the open bars of the cell, spearing the Plaintiff in the face and left eye.” (*Id.*) Plaintiff avers that this incident occurred during the 2:00 p.m. to 10:00 p.m., and that Defendants Kent, Hodgens, and Johnson were the officers assigned to his unit. (*Id.*) Plaintiff contends that they “are responsible for monitoring the porter while he [performs] his job and are supposed to accompany him while he moves throughout the unit.” (*Id.*)

Immediately after the assault, Plaintiff “started yelling for the officers, screaming at the top of his lungs he had just been assaulted by the porter and he needed help and medical attention.” (*Id.*) None of the officers responded. (*Id.*) Plaintiff had to wait until an officer made mandatory rounds. (*Id.*, PageID.5.) Plaintiff told the officer that he had been assaulted and needed medical attention. (*Id.*) The officer said “okay” and told Plaintiff that he could call medical. (*Id.*) Plaintiff does not know whether medical was called, but “he talked to each officer throughout the night, eventually receiving the answer that medical said he would need to see his provider.” (*Id.*) Plaintiff took this response “to mean he had to fill out a medical kite, wait until the next day, turn it in and wait to see medical.” (*Id.*)

The following morning, Plaintiff spoke to the nurse working the pill line, Lacey Heathington (not a party). (*Id.*) He told her about the assault and injury. (*Id.*) The nurse responded that “she would look into it and [that Plaintiff] needed to fill out a medical kite to see his provider.”

(*Id.*) Plaintiff also spoke to Officer Watson (not a party), who also told him to see his provider. (*Id.*) Plaintiff did not submit a medical kite “because he thought that by telling the staff the assault would be investigated and the camera watched.” (*Id.*) He thought this “would cause medical to assess his injuries.” (*Id.*) Plaintiff spoke to other officers and a nurse during the next shift and “only received the same answer.” (*Id.*, PageID.6.)

Plaintiff avers that throughout this time, he endured verbal abuse from other inmates who called him a “rat” and a “snitch” for telling officers about the assault. (*Id.*) Inmates also called him a “sex offender” and a “chomo,” and threatened to “throw feces on him when he walked by their cells.” (*Id.*) Plaintiff avers that at this point, he “started to think that the officers were deliberately indifferent to the assault and injuries because [he] was serving time for a sexual offense involving a child, treatment he had been the sufferer of before.” (*Id.*)

Plaintiff spoke to Sergeant Scroderus (not a party) during the 10:00 p.m. to 6:00 a.m. shift. (*Id.*) The sergeant left and came back, telling Plaintiff he had watched the video and saw the assault. (*Id.*) He took photographs of Plaintiff’s injuries and initiated an investigation. (*Id.*)

On the morning of October 30, 2021, multiple staff members came to Plaintiff’s cell and ordered him to submit to restraints. (*Id.*) Plaintiff refused because he was “scared to leave his cell.” (*Id.*) Officers told Plaintiff that he was going to medical; Plaintiff continued to refuse. (*Id.*) Plaintiff avers that he was afraid of being assaulted. (*Id.*) Staff issued Plaintiff a misconduct ticket for disobeying a direct order for not submitting to restraints. (*Id.*, PageID.7)

Plaintiff submitted two grievances about the incident. (*Id.*) He put them in a sealed envelope marked “Grievance Coordinator” and gave the envelope to the officer assigned to the unit. (*Id.*) After fourteen business days had passed, Plaintiff spoke to Defendant Pelky “about the status of his grievance and why he received no [receipt].” (*Id.*) Grievance Coordinator Bolton (not

a party) came to see Plaintiff and told him that he had not received any grievances from him. (*Id.*) Plaintiff submitted his grievances again and received a receipt. (*Id.*, PageID.8.) His grievance was denied at Step I, and he appealed. (*Id.*) Defendant Huss denied Plaintiff's Step II appeal. (ECF No. 1-5, PageID.21.) His Step III appeal was denied as well. (ECF No. 1-6, PageID.23.)

Based upon the foregoing, Plaintiff appears to assert First and Fourteenth Amendment claims regarding the handling of his grievances, and Eighth Amendment failure to protect and denial of medical care claims. Plaintiff seeks a transfer to the Oaks Correctional Facility (ECF) so that he can be housed in protective custody there. (*Id.*, PageID.9.) Plaintiff also seeks \$150,000.00 in damages. (*Id.*)

II. Immunity

As noted above, Plaintiff indicates that he is suing Defendants in their official capacities. (ECF No. 1, PageID.2–3.) A suit against an individual in his or her official capacity is equivalent to a suit brought against the governmental entity: in this case, the MDOC. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994). An official capacity defendant is absolutely immune from monetary damages. *Will*, 491 U.S. at 71; *Turker v. Ohio Dep't of Rehab. & Corr.*, 157 F.3d 453, 456 (6th Cir. 1998); *Wells v. Brown*, 891 F.2d 591, 592–93 (6th Cir. 1989). The Court, therefore, will dismiss Plaintiff's suit for monetary damages against Defendants in their respective official capacities.

Although damages claims against official capacity defendants are properly dismissed, an official capacity action seeking injunctive relief constitutes an exception to sovereign immunity. *See Ex Parte Young*, 209 U.S. 123, 159–60 (1908) (Eleventh Amendment immunity does not bar prospective injunctive relief against a state official). The Supreme Court has determined that a suit under *Ex Parte Young* for prospective injunctive relief should not be treated as an action against the state. *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985). Instead, the doctrine is a fiction

recognizing that unconstitutional acts cannot have been authorized by the state and therefore cannot be considered done under the state's authority. *Id.* As noted above, Plaintiff seeks prospective injunctive relief in the form of a transfer to the protective custody unit at ECF. His official capacity claims for injunctive relief against Defendants are, therefore, not barred by sovereign immunity.

III. Failure To State a Claim

A complaint may be dismissed for failure to state a claim if it fails “to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Id.*; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a “‘probability requirement,’ . . . it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is entitled to relief.” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

A. Claims Against Defendant Erickson

As noted *supra*, Plaintiff sues Erickson; however, his complaint is completely devoid of any allegations regarding her. Where an individual is named as a defendant without an allegation of specific conduct, the complaint is subject to dismissal, even under the liberal construction afforded to *pro se* complaints. *See Gilmore v. Corr. Corp. of Am.*, 92 F. App'x 188, 190 (6th Cir. 2004) (dismissing complaint where plaintiff failed to allege how any named defendant was involved in the violation of his rights); *Frazier v. Michigan*, 41 F. App'x 762, 764 (6th Cir. 2002) (dismissing plaintiff's claims where the complaint did not allege with any degree of specificity which of the named defendants were personally involved in or responsible for each alleged violation of rights). A claimed constitutional violation must be based upon active unconstitutional behavior. *See Grinter v. Knight*, 532 F.3d 567, 575–76 (6th Cir. 2008); *Greene v. Barber*, 310 F.3d 889, 899 (6th Cir. 2002). Plaintiff's assertions are simply insufficient to allege a plausible constitutional claim against Defendant Erickson. The Court, therefore, will dismiss Plaintiff's claims against her.

B. Claims Regarding Grievance Process

The Court has construed Plaintiff's complaint to assert violations of his First and Fourteenth Amendment rights premised upon (1) his allegation that his first two grievances went

missing and did not reach the Grievance Coordinator, and he spoke to Defendant Pelky about the lack of receipt; and (2) the fact that Defendant Huss denied his Step II appeal.

Plaintiff, however, has no due process right to file a prison grievance. The courts repeatedly have held that there exists no constitutionally protected due process right to an effective prison grievance procedure. *See Hewitt v. Helms*, 459 U.S. 460, 467 (1983); *Walker v. Mich. Dep't of Corr.*, 128 F. App'x 441, 445 (6th Cir. 2005); *Argue v. Hofmeyer*, 80 F. App'x 427, 430 (6th Cir. 2003); *Young v. Gundy*, 30 F. App'x 568, 569–70 (6th Cir. 2002); *Carpenter v. Wilkinson*, No. 99-3562, 2000 WL 190054, at *2 (6th Cir. Feb. 7, 2000); *see also Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996); *Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994) (collecting cases). Michigan law does not create a liberty interest in the grievance procedure. *See Olim v. Wakinekona*, 461 U.S. 238, 249 (1983); *Keenan v. Marker*, 23 F. App'x 405, 407 (6th Cir. 2001); *Wynn v. Wolf*, No. 93-2411, 1994 WL 105907, at *1 (6th Cir. Mar. 28, 1994). Because Plaintiff has no liberty interest in the grievance process, Defendants' conduct did not deprive him of due process.

Additionally, Plaintiff's right to petition the government is not violated by Defendant's failure to process or act on his grievances. The First Amendment "right to petition the government does not guarantee a response to the petition or the right to compel government officials to act on or adopt a citizen's views." *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999); *see also Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 285 (1984) (holding the right to petition protects only the right to address government; the government may refuse to listen or respond).

Defendants' actions have not barred Plaintiff from seeking a remedy for his grievances. *See Cruz v. Beto*, 405 U.S. 319, 321 (1972). "A prisoner's constitutional right to assert grievances typically is not violated when prison officials prohibit only 'one of several ways in which inmates may voice their complaints to, and seek relief, from prison officials' while leaving a formal

grievance procedure intact.” *Griffin v. Berghuis*, 563 F. App’x 411, 415–16 (6th Cir. 2014) (citing *Jones v. N.C. Prisoners’ Labor Union, Inc.*, 433 U.S. 119, 130 n.6 (1977)). Indeed, Plaintiff’s ability to seek redress is underscored by his *pro se* invocation of the judicial process. *See Azeez v. DeRobertis*, 568 F. Supp. 8, 10 (N.D. Ill. 1982). Even if Plaintiff had been improperly prevented from filing a grievance, his right of access to the courts to petition for redress of his grievances (i.e., by filing a lawsuit) cannot be compromised by his inability to file institutional grievances, and he therefore cannot demonstrate the actual injury required for an access-to-the-courts claim. *See, e.g., Lewis v. Casey*, 518 U.S. 343, 355 (1996) (requiring actual injury); *Bounds v. Smith*, 430 U.S. 817, 821–24 (1977). The exhaustion requirement only mandates exhaustion of *available* administrative remedies. *See* 42 U.S.C. § 1997e(a). If Plaintiff were improperly denied access to the grievance process, the process would be rendered unavailable, and exhaustion would not be a prerequisite for initiation of a civil rights action. *See Ross v. Blake*, 136 S. Ct. 1850, 1858–59 (2016) (reiterating that, if the prisoner is barred from pursuing a remedy by policy or by the interference of officials, the grievance process is not available, and exhaustion is not required).

Moreover, to the extent Plaintiff complains that Defendant Huss failed to provide him a satisfactory response to his grievance, the First Amendment “right to petition government does not guarantee a response to the petition or the right to compel government officials to act on or adopt a citizen’s views.” *Apple*, 183 F.3d at 479. Therefore, for all of the foregoing reasons, Plaintiff fails to state a claim under the First and Fourteenth Amendment regarding the grievance process.

C. Respondeat Superior

While unclear, it is possible that Plaintiff has sued Defendants Huss, Pelky, and Erickson based upon their respective supervisory positions. Government officials, however, may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior or vicarious liability. *Iqbal*, 556 U.S. at 676; *Monell v. New York City Dep’t of Soc. Servs.*, 436

U.S. 658, 691(1978); *Everson v. Leis*, 556 F.3d 484, 495 (6th Cir. 2009). A claimed constitutional violation must be based upon active unconstitutional behavior. *Grinter v. Knight*, 532 F.3d 567, 575–76 (6th Cir. 2008); *Greene v. Barber*, 310 F.3d 889, 899 (6th Cir. 2002). The acts of one’s subordinates are not enough, nor can supervisory liability be based upon the mere failure to act. *Grinter*, 532 F.3d at 576; *Greene*, 310 F.3d at 899; *Summers v. Leis*, 368 F.3d 881, 888 (6th Cir. 2004). Moreover, § 1983 liability may not be imposed simply because a supervisor denied an administrative grievance or failed to act based upon information contained in a grievance. *See Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999). “[A] plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676.

The Sixth Circuit repeatedly has summarized the minimum required to constitute active conduct by a supervisory official:

“[A] supervisory official’s failure to supervise, control or train the offending individual is not actionable *unless* the supervisor either encouraged the specific incident of misconduct or in some other way directly participated in it.” *Shehee*, 199 F.3d at 300 (emphasis added) (internal quotation marks omitted). We have interpreted this standard to mean that “at a minimum,” the plaintiff must show that the defendant “at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending officers.”

Peatross v. City of Memphis, 818 F.3d 233, 242 (6th Cir. 2016) (quoting *Shehee*, 199 F.3d at 300, and citing *Phillips v. Roane Cnty.*, 534 F.3d 531, 543 (6th Cir. 2008)); *see also Copeland v. Machulis*, 57 F.3d 476, 481 (6th Cir. 1995) (citing *Rizzo v. Goode*, 423 U.S. 362, 375–76 (1976), and *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984)); *Walton v. City of Southfield*, 995 F.2d 1331, 1340 (6th Cir. 1993); *Leach v. Shelby Cnty. Sheriff*, 891 F.2d 1241, 1246 (6th Cir. 1989).

Plaintiff fails to allege any facts showing that Defendants Huss, Pelky, and Erickson encouraged or condoned the conduct of their subordinates, or authorized, approved or knowingly acquiesced in the conduct. Indeed, as discussed above, Plaintiff fails to allege any facts at all about

Defendant Erickson’s conduct, and the only facts he alleges that pertain to Defendants Pelky and Huss relate to their involvement in the grievance process. His vague and conclusory allegations of supervisory responsibility are insufficient to demonstrate that Defendants Huss, Pelky, and Erickson were personally involved in the events described in Plaintiff’s complaint. Conclusory allegations of unconstitutional conduct without specific factual allegations fail to state a claim under § 1983. *See Iqbal*, 556 U.S. at 678–79; *Twombly*, 550 U.S. at 555. Thus, any claims premised upon respondeat superior liability will be dismissed.

D. Eighth Amendment Claims

1. Failure to Protect

Plaintiff suggests that Defendants Kent, Hodgens, and Johnson violated his Eighth Amendment rights by failing to protect him from the porter’s assault on October 28, 2021. (ECF No. 1, PageID.4.) Plaintiff avers that they were “responsible for monitoring the porter while he [performs] his job and are supposed to accompany him while he moves throughout the unit.” (*Id.*)

In its prohibition of “cruel and unusual punishments,” the Eighth Amendment places restraints on prison officials, directing that they may not use excessive physical force against prisoners and must also “take reasonable measures to guarantee the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Hudson v. Palmer*, 468 U.S. 517, 526–27 (1984)). To establish liability under the Eighth Amendment for a claim based on a failure to prevent harm to a prisoner, a plaintiff must show that the prison official acted with “deliberate indifference” to a substantial risk of serious harm facing the plaintiff. *Farmer*, 511 U.S. at 834; *Helling v. McKinney*, 509 U.S. 25, 32 (1993); *Bishop v. Hackel*, 636 F.3d 757, 766–67 (6th Cir. 2011); *Curry v. Scott*, 249 F.3d 493, 506 (6th Cir. 2001); *Woods v. Lecureux*, 110 F.3d 1215, 1222 (6th Cir. 1997); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996); *Taylor v. Mich.*

Dep't of Corr. 69 F.3d 76, 79 (6th Cir. 1995). Deliberate indifference is a higher standard than negligence and requires that “the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Farmer*, 511 U.S. at 837; *see also Bishop*, 636 F.3d at 766–67.

Moreover, inmates have a constitutionally protected right to personal safety grounded in the Eighth Amendment. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). Thus, prison staff are obliged “to take reasonable measures to guarantee the safety of the inmates” in their care. *Hudson v. Palmer*, 468 U.S. 517, 526–27 (1984). In particular, because officials have “stripped [prisoners] of virtually every means of self-protection[.]” “officials have a duty to protect prisoners from violence at the hands of other prisoners.” *Id.* at 833. To establish a violation of this right, Plaintiff must show that Defendant was deliberately indifferent to the Plaintiff’s risk of injury. *Walker v. Norris*, 917 F.2d 1449, 1453 (6th Cir. 1990); *McGhee v. Foltz*, 852 F.2d 876, 880–81 (6th Cir. 1988). While a prisoner does not need to prove that he has been the victim of an actual attack to bring a personal safety claim, he must at least establish that he reasonably fears such an attack. *Thompson v. Cnty. of Medina*, 29 F.3d 238, 242–43 (6th Cir. 1994) (holding that plaintiff has the minimal burden of “showing a sufficient inferential connection” between the alleged violation and inmate violence to “justify a reasonable fear for personal safety.”).

In his complaint, Plaintiff alleges that on October 28, 2021, he was emptying trash from his cell when the inmate porter who was collecting the trash “jammed the wooden shaft of the cleaning broom through the open bars of the cell, spearing the Plaintiff in the face and left eye.” (ECF No. 1, PageID.4.) Plaintiff avers that this incident occurred during the 2:00 p.m. to 10:00 p.m. shift, and that Defendants Kent, Hodgins, and Johnson were the officers assigned to his unit.

(*Id.*) Plaintiff contends that they “are responsible for monitoring the porter while he [performs] his job and are supposed to accompanying him while he moves throughout the unit.” (*Id.*) Plaintiff, however, fails to allege facts suggesting that Defendants Kent, Hodgins, and Johnson were aware that the inmate porter would assault Plaintiff and consciously disregarded that risk to Plaintiff’s safety. *See Farmer*, 511 U.S. at 837; *see also Bishop*, 636 F.3d at 766–67. At most, Plaintiff alleges negligence for their failure to accompany the porter on his rounds. Deliberate indifference however, “describes a state of mind more blameworthy than negligence.” *See Farmer*, 511 U.S. at 835. The Court, therefore, will dismiss Plaintiff’s Eighth Amendment failure to protect claims against Defendants Kent, Hodgins, and Johnson.²

2. Denial of Medical Care

Plaintiff also appears to suggest that Defendants Kent, Hodgins, and Johnson violated his Eighth Amendment rights by failing to ensure that he received medical care after the assault. (ECF No. 1, PageID.4–5.)

The Eighth Amendment prohibits the infliction of cruel and unusual punishment against those convicted of crimes. U.S. Const. amend. VIII. The Eighth Amendment obligates prison authorities to provide medical care to incarcerated individuals, as a failure to provide such care would be inconsistent with contemporary standards of decency. *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976). The Eighth Amendment is violated when a prison official is deliberately indifferent to the serious medical needs of a prisoner. *Id.* at 104–05; *Comstock v. McCrary*, 273 F.3d 693, 702 (6th Cir. 2001).

² Plaintiff also suggests that he was fearful that officers would not protect him from assaults by other inmates if he left his cell on October 30, 2021, to go to medical. (ECF No. 1, PageID.6–7.) The complaint, however, is devoid of facts suggesting that any of the named Defendants were part of the group that came to Plaintiff’s cell to escort him to the medical department.

Deliberate indifference may be manifested by a doctor's failure to respond to the medical needs of a prisoner, or by "prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983." *Estelle*, 429 U.S. at 104–05.

A claim for the deprivation of adequate medical care has an objective and a subjective component. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). To satisfy the objective component, the plaintiff must allege that the medical need at issue is sufficiently serious. *Id.* In other words, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. *Id.* The objective component of the adequate medical care test is satisfied "[w]here the seriousness of a prisoner's need[] for medical care is obvious even to a lay person." *Blackmore v. Kalamazoo Cnty.*, 390 F.3d 890, 899 (6th Cir. 2004); *see also Phillips v. Roane Cnty.*, 534 F.3d 531, 539–40 (6th Cir. 2008). Obviousness, however, is not strictly limited to what is detectable to the eye. Even if the layman cannot see the medical need, a condition may be obviously medically serious where a layman, if informed of the true medical situation, would deem the need for medical attention clear. *See, e.g., Rouster v. Saginaw Cnty.*, 749 F.3d 437, 446–51 (6th Cir. 2014) (holding that a prisoner who died from a perforated duodenum exhibited an "objectively serious need for medical treatment," even though his symptoms appeared to the medical staff at the time to be consistent with alcohol withdrawal); *Johnson v. Karnes*, 398 F.3d 868, 874 (6th Cir. 2005) (holding that prisoner's severed tendon was a "quite obvious" medical need, since "any lay person would realize to be serious," even though the condition was not visually obvious). If the plaintiff's claim, however, is based on "the prison's failure to treat a condition adequately, or where the prisoner's affliction is seemingly minor or non-obvious," *Blackmore*, 390 F.3d at 898, the plaintiff

must “place verifying medical evidence in the record to establish the detrimental effect of the delay in medical treatment,” *Napier v. Madison Cnty.*, 238 F.3d 739, 742 (6th Cir. 2001) (internal quotation marks omitted).

The subjective component requires an inmate to show that prison officials have “a sufficiently culpable state of mind” in denying medical care. *Brown v. Bargery*, 207 F.3d 863, 867 (6th Cir. 2000). Deliberate indifference “entails something more than mere negligence,” but can be “satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.” *Farmer*, 511 U.S. at 835. “[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 837. To prove a defendant’s subjective knowledge, “[a] plaintiff may rely on circumstantial evidence . . . : A jury is entitled to ‘conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.’” *Rhinehart v. Scutt*, 894 F.3d 721, 738 (6th Cir. 2018) (quoting *Farmer*, 511 U.S. at 842)).

However, not every claim by a prisoner that he has received inadequate medical treatment states a violation of the Eighth Amendment. *Estelle*, 429 U.S. at 105. As the Supreme Court explained:

[A]n inadvertent failure to provide adequate medical care cannot be said to constitute an unnecessary and wanton infliction of pain or to be repugnant to the conscience of mankind. Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.

Id. at 105–06 (quotations omitted). Thus, differences in judgment between an inmate and prison medical personnel regarding the appropriate medical diagnoses or treatment are not enough to state a deliberate indifference claim. *Darrah v. Krisher*, 865 F.3d 361, 372 (6th Cir. 2017); *Briggs v.*

Westcomb, 801 F. App'x 956, 959 (6th Cir. 2020); *Mitchell v. Hininger*, 553 F. App'x 602, 605 (2014). This is so even if the misdiagnosis results in an inadequate course of treatment and considerable suffering. *Gabehart v. Chapleau*, No. 96-5050, 1997 WL 160322, at *2 (6th Cir. Apr. 4, 1997).

Here, Plaintiff avers that after the assault, he “started yelling for the officers, screaming at the top of his lungs he had just been assaulted by the porter and he needed help and medical attention.” (ECF No. 1, PageID.4.) Plaintiff claims that none of the officers responded. (*Id.*) He contends that the “officers move about the unit or sit at an officers’ station desk and can hear inmates from any part of the unit if they yell loudly.” (*Id.*, PageID.4–5.) Plaintiff had to wait until one officer made rounds and told that officer that he needed medical attention. (*Id.*, PageID.5.) The “officer told [Plaintiff] okay and he would call medical.” (*Id.*)

Plaintiff’s allegations are insufficient to permit the Court to infer that Defendants Kent, Hodgins, and Johnson were deliberately indifferent to Plaintiff’s medical needs. As an initial matter, Plaintiff’s vague references to “officers” and “one officer” are insufficient to support a reasonable inference that each Defendant is liable for denying Plaintiff medical care. *See Boxill v. O’Grady*, 935 F.3d 510, 518 (6th Cir. 2019) (noting that “[s]ummary reference to a single, [multi]-headed ‘Defendants’ does not support a reasonable inference that each Defendant is liable for [a constitutional violation]”). Moreover, it is certainly possible that the failure to call medical by the officer who agreed to do so was intentional, but Plaintiff fails to allege any facts to support that inference. It is also possible that the officer’s failure was inadvertent, and he was simply negligent. “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 679. Here, there is nothing in Plaintiff’s complaint that might distinguish

Defendants Kent, Hodgins, and Johnson’s purported deliberate indifference to Plaintiff’s medical needs from simple negligence, which *Farmer* has held is not enough for an Eighth Amendment claim. *See Farmer*, 511 U.S. at 835. The Court, therefore, will dismiss Plaintiff’s Eighth Amendment claims against Defendants Kent, Hodgins, and Johnson concerning the denial of medical care.

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Plaintiff’s complaint will be dismissed for failure to state a claim, under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). Although the Court concludes that Plaintiff’s claims are properly dismissed, the Court does not conclude that any issue Plaintiff might raise on appeal would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, the Court does not certify that an appeal would not be taken in good faith. Should Plaintiff appeal this decision, the Court will assess the \$505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610–11, unless Plaintiff is barred from proceeding *in forma pauperis*, e.g., by the “three-strikes” rule of § 1915(g). If he is barred, he will be required to pay the \$505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A judgment consistent with this opinion will be entered.

Dated: May 11, 2022

/s/ *Maarten Vermaat*

Maarten Vermaat
United States Magistrate Judge